STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: U S WEST COMMUNICATIONS, INC., n/k/a QWEST CORPORATION	DOCKET NOS. INU-00-2 SPU-00-11

RECONSIDERATION OF CONDITIONAL STATEMENT REGARDING CHECKLIST ITEM 13: RECIPROCAL COMPENSATION

(Issued May 31, 2002)

On February 10, 2000, the Utilities Board (Board) issued an order initiating an investigation relating to the possible future entry of U S WEST Communications, Inc., n/k/a Qwest Corporation (Qwest), into the interLATA market. The investigation was identified as Docket No. INU-00-2.

In a filing dated May 4, 2000, Qwest encouraged the Board to consider a multi-state process for purposes of its review of Track A (competition issues),[1] various aspects of each item on the 14-point competitive checklist, section 272 (separate subsidiary) issues and public interest considerations. The Board considered the concept of a multi-state process for purposes of its review of a Qwest application to provide in-region, interLATA services, sought comment, and subsequently issued an order dated August 10, 2000, indicating that its initial review of Qwest's compliance with the requirements of 47 U.S.C. § 271 would be through participation in a multi-state workshop process with the Idaho Public Utilities Commission, North Dakota Public Service Commission, Montana Public Service Commission, Wyoming Public Service Commission, and the Utah Public Service

[1] *See*, *47 U.S.C. § 271(c)(1)(A).*

Commission. Since the time of that order, the New Mexico Public Regulation Commission has also joined in the workshop process.

To the extent that an issue is to be further evaluated in the Regional Oversight Committee (ROC) Operational Support Systems (OSS) test or some other proceeding, the Board will incorporate that evidence into its final recommendation to the Federal Communications Commission (FCC) as to whether Qwest has fully complied with a checklist requirement. To the extent that an issue requires performance of some duty or activity on Qwest's part, Qwest will need to demonstrate that it adequately performs as expected in order for the Board to make a positive recommendation to the FCC following an application filed by Qwest.

The Liberty Consulting Group (Liberty) filed its report with the Board on May 15, 2001, addressing issues on four checklist items, including Reciprocal Compensation. Comments on the report and Liberty's recommendations were filed by Qwest and AT&T Communications of the Midwest, Inc. and TCG Affiliates (collectively AT&T).

On October 12, 2001, the Board issued a conditional statement addressing the issues discussed in the May 15, 2001 report. AT&T filed comments regarding two issues related to the Reciprocal Compensation checklist item discussed in the Board's conditional statement. Qwest filed a response to AT&T's comments on November 16, 2001, and a supplement to its response on December 21, 2001. The two issues related to Internet Service Provider (ISP) Traffic[2] and the Commingling of Special Access and Local Traffic.[3]

A. Internet Service Provider Traffic

In its report, Liberty noted that the FCC asserted jurisdiction over ISP traffic under Section 201, that Section 251 excludes ISP traffic from reciprocal compensation, and that it is inappropriate to look at the treatment of ISP traffic as a condition for approval of checklist item13 requirements. It was necessary to modify certain sections of the Statement of Generally Available Terms and Conditions (SGAT) as a result of the FCC's ISP Remand Order.[4]

On May 25, 2001, Qwest submitted language that revised the SGAT to track the ISP Remand Order and the Board conditionally accepted the proposed modifications. Although other participants had the opportunity to review this compliance filing prior to the Board's issuance of its October 12, 2001, Conditional Statement, no comments were filed.

In its November 11, 2001, comments AT&T suggested several changes to Qwest's proposed language. AT&T believes its language will make it more consistent with the FCC's ISP Remand Order.

This issue concerns the compensation for termination of telecommunications services. Iowa is known as a bill and keep state. Subrule 199 IAC 38.6(1) states:

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[2] The issue <u>3. Commingling of InterLATA and Local Traffic on the Same Trunk Groups</u> is addressed at page 36 of the Board's October 12, 2001, Conditional Statement and at pages 115-117 of Liberty's May 15, 2001, report.

[3] The issue <u>1. Excluding ISP Traffic from Reciprocal Compensation</u> is discussed at pages 33-36 of the Board's October 12, 2001, Conditional Statement and at pages 111-113 of Liberty's May 15, 2001, Report.

[4] *Implementation of the Local Competition Provisions of the telecommunications Act of 1996*, CC Docket 96-98, FCC 01-131 (Apr. 27, 2001) (ISP Remand Order)

> Until the board approves monetary compensation and until tariffs for the compensation are in effect, each local utility shall terminate local and extended area service calls on a mutual exchange of traffic basis, at no charge to the originating provider.

Subrule 199 IAC 38.6(2) allows for a local exchange company (LEC) to end this arrangement if a six-month period was unbalanced by a ratio of at least 55 percent terminating to 45 percent originating and the LEC files a cost-based tariff for monetary compensation. To date, no LEC has made this showing. Thus, there is no state-approved or state-negotiated reciprocal compensation rate currently in effect.

All of AT&T's proposed changes were to Section 7.3.6 of the SGAT. This is the section pertaining to ISP-bound traffic compensation. Qwest responded with a broad sweep, eliminating its proposed changes that the Board accepted in its October 12, 2001, conditional statement. The proposal eliminates references to the FCC's transitional compensation scheme, the rate caps, and the rebuttable traffic presumption of a 3:1 ratio of terminating to originating traffic.

Qwest's simplifying language in this section appears to be consistent with both the Board's rules and the ISP Remand Order at ¶¶ 8 and 80. All other proposed modifications also appear to simplify the SGAT and the Board believes that the changes will be in the CLEC's interest.

The Board will adopt Qwest's proposed changes to the Iowa SGAT and direct that they be incorporated into the final SGAT language, thus modifying the language that was conditionally approved as well as negating the need for any of AT&T's proposed changes.

In reviewing Qwest's latest SGAT filing, the fifth revision issued on May 24, 2002, on page 73 of this redlined revision, Qwest has used the phrase "Reserved for

Future Use" rather than "ISP-Bound Traffic" as the title for Section 7.3.6. The Board assumes this was an oversight and directs Qwest to make that correction to reflect the appropriate title.

B. Commingling of Special Access and Local Traffic on Special Access Facilities

Commingling is the placement of multiple types of traffic on the same special access circuit. In simpler terms, a competitive local exchange company (CLEC) would purchase a DS3 facility from Qwest. (There are 28 DS1 trunks in a DS3 facility). Some of the DS1 trunks would be designated as carrying special access (long distance) traffic and some would be designated as carrying local traffic (interconnection trunks). Others could be designated as being used to access unbundled network elements (UNEs).

AT&T argued that the CLEC would pay for the DS1 trunks according to their designations, i.e., Total Element Long-Run Incremental Cost (TELRIC) rates applicable to those trunks designated for interconnection, or UNE access and access rates for the special access trunks. Qwest argued that spare access circuits could be used for interconnection but should be priced based upon how the CLEC secured them.

Liberty concluded that access charges are an important mechanism for commissions in achieving universal service and that anything that undermines the current pricing structure would necessitate a review of all Qwest pricing policies.

AT&T has not presented any new arguments that were not reviewed by Liberty. In addition, there have not been any new or different orders released by the

FCC on this topic that bear new thoughts on this subject. Thus, the Board believes that its decision to adopt Liberty's original resolution should stand.

SUMMARY

The Board rejects the various arguments of AT&T, and indicates at this time that Qwest has conditionally satisfied checklist item 13: Reciprocal Compensation. This conditional statement indicating these requirements are satisfied is subject to the same limitations noted earlier in this statement related to other proceedings and processes.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

Any responses to this statement and all future filings and Board orders or statements in this docket must be filed no later than close of business on the third business day following the filing or issuance.

UTILITIES BOARD

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/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 31st day of May, 2002.